

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Nextel Partners Operating Corp. and)	
NPCR, Inc. d/b/a Nextel Partners)	
)	
Application for Certificates of Service)	ICC Docket No. 03-0487
Authority to Operate as Providers)	
of CMRS Telecommunications Services)	
in the State of Illinois)	
)	

**NEXTEL PARTNERS OPERATING CORP. AND
NPCR, INC. d/b/a NEXTEL PARTNERS' REPLY BRIEF ON EXCEPTIONS**

I. INTRODUCTION

1. Nextel Partners Operating Corp. ("NPOC") and NPCR, Inc. d/b/a Nextel Partners ("NPCR") (hereinafter jointly referred to as the "Applicants"), by and through their attorneys, hereby submit this Reply to Exceptions filed the Staff on March 3, 2004 in the above-captioned matter.

II. ARGUMENT

2. Staff proposes that an additional conclusion be included within the Administrative Law Judge's Proposed Order Filed on February 18, 2004. Staff proposes that the Illinois Commerce Commission ("ICC") find that Nextel Partners Operating Corp. ("NPOC") has not alleged sufficient facts to demonstrate that NPOC has sufficient control over plants, property or equipment used to provide telecommunications service so as to qualify as a telecommunications carrier.

3. Staff's exceptions on this point should be rejected for two reasons. First, as set forth clearly in the Amended Application, NPOC is a Direct Operating Company that owns 100% of NPCR. NPCR owns, controls, operates and manages the property used to provide

CMRS in Illinois today.¹ The Amended Application clearly alleges that NPOC “exercises day-to-day management control over NPCR.”² Moreover, the Nextel Partners’ Form 10-Q filed with the Securities and Exchange Commission states as follows: “Nextel Partners (“We”) provides a wide array of digital wireless communications services throughout the United States Our operations are primarily conducted by Nextel Partners Operating Corporation, (“OPCO”), a wholly owned subsidiary.”³ Staff’s conclusion that the pleadings do not allege that NPOC exercises control over the property used to provide service is simply wrong.

4. Second, as Nextel Partners has pointed out repeatedly in this docket, operations can only be provided under a license granted by the Federal Communications Commission (“FCC”) under Section 301 of the Communications Act, 47 U.S.C. §301, and under FCC rules and practice, FCC licenses are “held” by all entities under common control with the license holder of record.⁴ This means that NPOC is currently exercising “control” over telecommunications operations for purposes of the federal licensing scheme.⁵ Because NPOC is fully entitled under federal law to provide CMRS pursuant to licenses issued by the FCC, the ICC cannot stop it from doing so. *See* 47 U.S.C. § 332(c)(3)(A). That would be entry regulation that is clearly preempted by federal law.⁶

¹ *See* Amended Application at ¶¶ 1-2, 5, 21.

² *See* Amended Application at ¶ 8.

³ *See* Amended Application at Ex. G, p. 8.

⁴ *See* Nextel Partners Operating Corp. And NPCR, Inc. d/b/a Nextel Partners' Brief on Exceptions, ¶¶ 12-14.

⁵ *Id.*

⁶ *See* Nextel Partners Operating Corp. And NPCR, Inc. d/b/a Nextel Partners' Brief on Exceptions, ¶¶ 3-9.

III. CONCLUSION

WHEREFORE, Nextel Partners Operating Corp. and NPCR, Inc. d/b/a Nextel Partners respectfully request that the Commission deny Staff's Exceptions filed on March 3, 2004.

Respectfully submitted,

NPCR, INC. d/b/a NEXTEL PARTNERS
NEXTEL PARTNERS OPERATING CORP.

Dated: March 9, 2004

By: /s/ Stephen J. Moore

Stephen J. Moore
ROWLAND & MOORE LLP
200 West Superior Street
Suite 400
Chicago, Illinois 60610
312-803-1000 (voice)
312-475-1589 (facsimile)

Philip R. Schenkenberg
BRIGGS AND MORGAN, P.A.
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
651-808-6578 (voice)
651-808-6450 (facsimile)

Of Counsel:

Albert J. Catalano
Matthew J. Plache
Ronald J. Jarvis
CATALANO & PLACHE PLLC
3221 M Street, NW
Washington, DC 20007
202-338-3200 (voice)
(202) 338-1700 (facsimile)

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NOTICE OF FILING

Please take notice that on this date I caused to be sent to Elizabeth A. Rolando, Chief Clerk, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62701, by electronic mail an original of the NEXTEL PARTNERS OPERATING CORP. AND NPCR, INC. d/b/a NEXTEL PARTNERS' REPLY BRIEF ON EXCEPTIONS

Dated: March 9, 2004

By: /s/ Stephen J. Moore

Stephen J. Moore
ROWLAND & MOORE LLP
200 West Superior Street
Suite 400
Chicago, Illinois 60610
312-803-1000 (voice)
312-803-0953 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the NEXTEL PARTNERS OPERATING CORP. AND NPCR, INC. d/b/a NEXTEL PARTNERS' REPLY BRIEF ON EXCEPTIONS has been served upon the parties listed on the attached service list on the 9th day of March 2004, by electronic mail.

/s/ Stephen J. Moore

Stephen J. Moore

03-0487 Service List

Michael L. Wallace
Administrative Law Judge
Illinois Commerce Commission
527 East Capitol Avenue
Springfield, IL 62701
mwallace@icc.state.il.us

Sean R. Brady
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601-3104
sbrady@icc.state.il.us

Albert J. Catalano
Atty. for Applicant
Catalano& Plache, PLLC
3221 M St., NW
Washington, DC 20007
ajc@catalanoplache.com

Matt C. Deering
Atty. for IITA
Meyer Capel, a Professional Corporation
306 W. Church St.
PO Box 6750
Champaign, IL 61826-6750
mdeering@meyercapel.com

Troy A. Fodor
Atty. Home Telephone Company
Troy A. Fodor, P.C.
913 S. Sixth St.
Springfield, IL 62703
troyafodor@aol.com

Carmen Fosco
Office of General Counsel
Illinois Commerce Commission
160 N. LaSalle St., Ste. C-800
Chicago, IL 60601-3104
cfosco@icc.state.il.us

E. M. Fulton
Atty. for Home Telephone Company
Troy A. Fodor, P.C.
913 S. Sixth St.
Springfield, IL 62703

Mark Hanson
Case Manager
Illinois Commerce Commission
527 E. Capitol Ave.
Springfield, IL 62701
mhanson@icc.state.il.us

Ronald J. Jarvis
Atty. for Applicant
Catalano& Plache, PLLC
3221 M St., NW
Washington, DC 20007
rjj@catalanoplache.com

Owen E. MacBride
Atty. for Illinois Consolidated Telephone
Company
Schiff Hardin & Waite
6600 Sears Tower
Chicago, IL 60606
omacbride@schiffhardin.com

Dennis K. Muncy
Atty. for IITA
Meyer Capel, a Professional Corporation
306 W. Church St.
PO Box 6750
Champaign, IL 61826-6750
dmuncy@meyercapel.com

Joseph D. Murphy
Atty. for IITA
Meyer Capel, a Professional Corporation
306 W. Church St., PO Box 6750
Champaign, IL 61826-6750
jmurphy@meyercapel.com

Edward Pence
Director
Illinois Consolidated Telephone Company
121 S. 17th St.
Mattoon, IL 61938
edward.pence@consolidated.com

Matthew J. Plache
Atty. for Applicant
Catalano & Plache, PLLC
3221 M St., NW
Washington, DC 20007
mjp@catalanoplache.com

Gary L. Smith
Atty. for Intervenors
Loewenstein, Hagen & Smith, P.C.
1204 S. Fourth St.
Springfield, IL 62703-2229
lexsmith@lhoslaw.com

Philip R. Schenkenberg
Briggs and Morgan, P.A.
2200 First National Bank Bldg.
St. Paul, MN 55101
pschenkenberg@briggs.com